IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2591 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

KODARBHAI GADHABHAI PANDA

Appearance:

1. Special Civil Application No. 2591 of 1992

MR PRANAV G DESAI for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/01/2002

ORAL JUDGEMENT

#. Heard Mr.Pranav G. Desai, learned advocate appearing on behalf of the petitioner Corporation. The petitioner Corporation has challenged the award passed by the labour

court in Reference No.237 / 1989 dated 1st January, 1990, wherein the labour court has set aside the dismissal order dated 31st December, 1988 and granted reinstatement to the respondent workman on the post of Helper for period of one year and after completion of one year period, the respondent workman presumed to have been taken back as Conductor. However, the labour court has also directed that services of the respondent workman to be continued but not granted any backwages to the respondent workman.

#. This Court has issued RULE on 25th November, 1992 and notice as to interim relief returnable on 21st December, 1992. Thereafter, the Hon'ble Division Bench of this Court has passed order for interim relief on 27th January, 1993. The Division Bench of this Court has not granted any interim stay against implementation and execution of the award. Notice of Rule has been served on the respondent workman. Despite that the respondent workman has not appeared in the present proceedings, nor engaged any advocate and even when the matter is taken up for hearing, none appeared. However, considering the fact that this being the old matter of the year 1992, this Court has considered the legality and validity of the award in question in absence of the respondent wrokman.

#. The allegation against the respondent workman is that he was on duty on 12th June, 1987 as Conductor in the route of Nathdwara to Surat and when his bus was checked by the checking staff, at that time, there were 87 passengers travelling in the bus and out of 87, one passenger was not given ticket and no fare was collected and in respect of four and half passenger, the respondent conductor has issued tickets upto limit of Gujarat State and one half ticket has been issued upto Rajasthan State but four tickets upto limit of Rajasthan State were not issued by the respondent conductor. Therefore, it was the case of short tickets issued by the respondent conductor. Before the Labour Court, vide Exh.8 the respondent workman has given purses inter alia stating that the respondent workman is not challenging legality and validity of the departmental inquiry and also not claiming any amount of backwages for interim period and he requested before the labour court to exercise powers under Section 11-A of the Industrial Disputes Act for reducing the punishment in question. No oral evidence has been led by the other side. Thereafter, the labour court has examined the merits and considered the explanation given by the respondent conductor that according to the explanation of the respondent workman

that tickets were given to four passengers but the same were misplaced by the passengers when it was demanded by the checking staff. Therefore, the labour court has come to the conclusion that there was no intention on the part of the respondent conductor to misappropriate the amount but the respondent conductor remained negligent and therefore, considering seriousness of the misconduct, the labour court has lower downed the respondent conductor on the post of helper for the period of one year. Moreover, the labour court has not granted any backwages for interim period but only granted continuity of services for other benefits of service.

#. Learned advocate Mr.Pranav Desai appearing on behalf of the petitioner Corporation has submitted that the respondent conductor has not issued tickets to four passengers upto limit of Rajasthan State and therefore, the impugned tickets were obtained by the checking staff. Therefore, it is serious misconduct committed by the respondent conductor and resultantly, the award impugned in this petition, requires to be quashed and set aside by this Court and the labour court has only exercised the powers under Section 11-A of the I.D. Act and considering the misconduct of the respondent workman, it will be a case of misplaced sympathy to order his reinstatement.

#. I have considered submissions of the learned advocate Mr.Desai on behalf of the petitioner Corporation. The fact remains that the order of reinstatement in the post of Helper for period of one year and thereafter, in the post of Conductor. The Division Bench of this Court passed a detailed order dated 27th January, 1993 discussing all the aspects but not granted any stay against implementation of the award in question. Therefore, it can be safely presumed that naturally by this time, the respondent workman must have been first, reinstated in the cadre of Helper and after one year, as Conductor. Once the award in question has been fully implemented by the Corporation and more than seven years have been passed and the respondent workman is working and the petitioner has not pointed out any development subsequent to reinstatement of the respondent workman. Therefore, considering overall view and the facts and circumstances of the case, according to my opinion, after period of seven years, once the award is fully implemented, there seems no justified reason to set aside the award in question. The labour court has rightly exercised the powers under Section 11-A of the Industrial Disputes Act, 1947, coming to the conclusion having accepted the explanation given by the respondent

conductor is believable. However, at the most, it amounts to negligence and therefore, since there was no intention of the respondent conductor to misappropriate the amount, in all possibility, some doubt may be created against the respondent workman but merely this possibility of doubt cannot result into punishment of dismissal. Therefore, in the finding given by by the labour court, in view of this Court, no error has been committed by the labour court. As such, there is no jurisdictional error nor any procedural irregularity committed by the labour court which requires interference by this Court while exercising the powers under Article 226 and 227 of the Constitution of India. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANDKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

#. In view of above discussion, there is no substance in the petition and the same requires to be rejected. Present petition stands rejected with no order as to costs. Rule discharged. Interim relief, if any, stands vacated.

Date : 19-1-2002 [H.K.Rathod, J.]

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